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7 UNITED STATES OF AMERICA

FILED

DEC 13 2007

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9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

07CR 3366 - LEG

11 UNITED STATES OF AMERICA,) Magistrate Case No. 07MJ2784

12 v. Plaintiff,)

13 NICOLE LAMB,)

14 v. Defendant.)

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Joseph
19 J.M. Orabona, Assistant United States Attorney, and defendant NICOLE LAMB, by and through and
20 with the advice and consent of defense counsel, Gregory Murphy, Federal Defenders of San Diego,
21 Inc., that:

22 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
25 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
26 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)
27 and (v)(II).

28 JJO:mg:12/4/07

MWS ON
BOND
POV

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **January 2, 2008**.

6 4. The material witnesses, Moises De La Luz-Martinez, Juan Jose Pacheco-Flores, and
7 Beatriz De La Luz , in this case:

8 a. Are aliens with no lawful right to enter or remain in the United States;
9 b. Entered or attempted to enter the United States illegally on or about
10 November 29, 2007;

11 c. Were found in a vehicle driven by defendant at Highway 8 Checkpoint near
12 in-Ko-Pah, California and that defendant knew or acted in reckless disregard of the fact that they
13 were aliens with no lawful right to enter or remain in the United States;

14 d. Were having others pay on their behalf \$3,000 to others to be brought into the
15 United States illegally and/or transported illegally to their destination therein; and,

16 e. May be released and remanded immediately to the Department of Homeland
17 Security for return to their country of origin.

18 5. After the material witnesses are ordered released by the Court pursuant to this
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
23 substantive evidence;

24 b. The United States may elicit hearsay testimony from arresting agents
25 regarding any statements made by the material witness(es) provided in discovery, and such testimony
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
27 of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to their country of origin.

12 || It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

16 Dated: 12/13/07

JOSEPH J.M. ORABONA
Assistant United States Attorney

Dated: 12/7/07

~~GREGORY MURPHY
Defense Counsel for Lamb~~

21 Dated: 12-7-07

~~NICOLE LAMB~~
Defendant

ORDER

2 Upon joint application and motion of the parties, and for good cause shown,
3 **THE STIPULATION** is admitted into evidence, and,
4 **IT IS ORDERED** that the above-named material witness(es) be released and remanded
5 forthwith to the Department of Homeland Security for return to their country of origin.
6 **SO ORDERED.**

SO ORDERED.

Dated: 12/13/2007

Nelson Bowles
United States Magistrate Judge